

**NOT FOR PUBLICATION**

**UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW JERSEY**

CRESSKILL VOLUNTEER FIRST AID SQUAD,  
Et al.

Plaintiffs,

v.

BOROUGH OF CRESSKILL, Et al.,

Defendants.

CIVIL ACTION NO. 05-3294  
(DRD)

**OPINION**

**Appearances**

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**DEBEVOISE, Senior District Judge**

Plaintiffs, Cresskill Volunteer First Aid Squad (“The Squad”), the New Jersey State First Aid Council, Inc. (“NJSFAC”), Carl Wallin (a member and former officer of the Squad), and Peter Olivieri (a member of the Board of Trustees of the Squad), filed suit on June 29, 2005, against Defendants. The Defendants were the Borough of Cresskill and various of its officials as well as John Does 1-25. In an opinion and order dated December 8, 2005, this Court dismissed Plaintiffs’ federal claims with prejudice and dismissed their state law claims without prejudice. On December 22, 2005 and December 23, 2005, the Defendants filed two separate motions for sanctions pursuant to Fed. R. Civ. P. 11. Defendants argue that they are entitled to attorneys’ fees because Plaintiffs’ claims were frivolous in nature.

**I. DISCUSSION**

Under L. Civ. R. 11.3, “All applications for sanctions pursuant to Fed. R. Civ. P. 11 shall be filed with the Clerk prior to the entry of final judgment . . . .” Rule 11.3 was first adopted in Mary Ann Pensiero, Inc. v. Lingle, 847 F.2d 90, 100 (3d Cir. 1988) as a supervisory rule for the courts in the Third Circuit. In that case, the court expressed its concern for judicial economy, pointing out the inefficiencies that result when a motion for sanctions is delayed. As the court noted, a delayed filing of a motion for sanctions may prevent the Court of Appeals from addressing the issue of sanctions in an initial appeal, thereby triggering a second appeal involving many of the same issues. Id. at 99-100. To avoid such inefficiencies, the court

adopted the above rule requiring that motions for sanctions be filed prior to a final judgment in the District Court. See Also Piscitelli v. Mirow (In re Nicola), 65 Fed. Appx. 759, 761-62 (3<sup>rd</sup> Cir. 2003); Simmerman v. Corino, 27 F.3d 58, 59 (3d Cir. 1994); Hockley v. Shan Enterprises, 19 F. Supp. 2d 235, 238 (D.N.J. 1998).

In the present case, Plaintiffs' action was dismissed on December 8, 2005 and the motions for sanctions were not filed until December 22, 2005 and December 23, 2005. Therefore, Defendants' time for filing this motion has expired and it will be denied.<sup>1</sup>

## **II. CONCLUSION**

For the reasons set forth above, Defendants' motions for sanctions pursuant to Fed. R. Civ. P. 11 will be denied. The Court will enter an order implementing this opinion.

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/s/ Dickinson R. Debevoise  
DICKINSON R. DEBEVOISE, U.S.S.D.J.

Dated: January 23, 2006

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<sup>1</sup>Insofar as Plaintiffs, via their opposition briefs, cross-move for sanctions against Defendants for filing a “frivolous motion for sanctions,” the Court finds no facts showing that Defendants raised this motion to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. The Court finds no basis for awarding attorneys’ fees pursuant to Rule 11(c)(1)(A).